

IN RE: PETITION FOR ZONING VARIANCE
W/S Bell Avenue, 60' S of the
c/l of Cross Street
(1936-1940 Bell Avenue)
13th Election District
1st Councilmanic District
Chester L. Farley, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 93-46-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Zoning Variance filed by the legal owners of the subject property, Chester L. and Virginia J. Farley, and the Contract Purchaser, Matthew Decker, President of the Decker Group. The Petitioners request relief from Sections 1802.3.C.1 and 304.1.C of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 feet for Lots 11, 12, and 13 of the Oak Park subdivision, also known as 1936, 1938 and 1940 Bell Avenue. The Petitioners also request a variance to permit a minimum lot area of 4,850 sq.ft. in lieu of the required 6,000 sq.ft. for an existing dwelling on Lot 11 and a proposed dwelling on Lot 12, all as more particularly described on Petitioner's Exhibit 1.

Appearing in support of the Petition was Matthew Decker. Appearing as Protestants in the matter were Elfrieda B. Lowe, Marjorie Helwig and Helene E. Seibert, adjoining and nearby residents of the area.

Testimony indicated that the subject properties, known as 1936, 1938 and 1940 Bell Avenue, consist of three lots, known as Lots 11, 12 and 13 of Oak Park and are zoned D.R. 5.5. Lot 11 consists of 4,850 sq.ft. in area and is improved with a single family dwelling. Lot 12 contains 4,850 sq.ft. in area and Lot 13 has an area of 7,265 sq.ft. Lots 12 and 13 are unimproved. The Petitioners propose to develop Lots 12 and 13 with a

two-story frame dwelling on each. The Petitioners filed the instant Petition due to the fact that the subject properties do not meet current zoning regulations as set forth above.

Mr. Decker testified that the Oak Park subdivision was developed many years ago. The original plat for the development of this community was based on 50-foot wide lots. He testified that many of the existing homes in this community were built on only one lot. He did admit, however, that several homes were built on double or triple lots. Thus, the community contains a mixture of dwellings, built upon either 50, 100 or 150-foot wide lots. Mr. Decker further testified that Lots 12 and 13 would be undevelopable without the requested variances. As to Lot 11, Mr. Decker seeks only to legitimize existing conditions.

In opposition to the request, Ms. Elfrieda Lowe testified. She resides immediately to the rear and adjacent to the subject properties. Ms. Lowe objects to the relief requested and is particularly concerned about storm water runoff which might result if Lots 12 and 13 are developed. She noted that her dwelling is located to the rear of her lot and immediately adjacent to her adjoining property line with Lots 11 and 12. Ms. Lowe also noted that the roads in this neighborhood are narrow and that parking and traffic congestion would be exacerbated if the variances were granted. Ms. Helwig and Ms. Seibert echoed Ms. Lowe's concerns.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

The Petitioner bears the burden of adducing testimony that practical difficulty will result if the relief requested is not granted. The variance may not be granted for matters of convenience or economic gain. If the Petitioner can enjoy a reasonable use of the property without the granting of the variance, it should not be granted.

Further, Section 304.C of the B.C.Z.R., the regulation from which the Petitioners seek relief provides a lawful mechanism for development of undersized lots with single family dwellings. That Section permits a dwelling to be erected on a lot having an area or width less than that required if: a) the lot is part of a duly recorded subdivision adopted prior to the regulations; b) that all other height and area regulations are complied with; and, c) that the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements. Each of these three requirements need be satisfied before development of a single family dwelling on an undersized lot may be permitted. As noted above, the Petitioners seek a variance from Section 304.C of the B.C.Z.R.

As to Lot 11 (1936 Bell Avenue), I am persuaded that the variance should be granted. As the Petitioner and protesting neighbors note, the subject property is improved and the house thereon has existed for

many years. The Petitioner seeks only to legitimize the existing situation. Under these circumstances, I am persuaded that the variances for this lot should be granted and will so order.

Lots 12 and 13 present a different issue. Although individually, they each lack the required width of 55 feet, they are collectively 105 feet in width. Further, a combination of Lots 12 and 13 would result in a significant area which far exceeds the square footage required. Further, the lots are presently undeveloped and thus, the owner of same is afforded the luxury of being able to improve the property while still complying with the area and width regulations of the B.C.Z.R. Indeed, Section 304.C of the B.C.Z.R. contemplates the exact situation which is presented. That is, the Petitioner must present compelling reasons why the variances should be granted, in that he collectively owns sufficient acreage to develop one single family dwelling on Lots 12 and 13, thereby meeting the proper area and width requirements. Mr. Decker presented no rational basis why he cannot build a dwelling using both lots as has been the case for many double lot owners in this subdivision. Under these circumstances, I am convinced that the variances for Lots 12 and 13 should be denied. A desire to obtain an increased financial return by construction on both lots cannot serve as the basis for the granting of the variance.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested shall be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 11th day of October, 1992 that the Petition for Zoning Variance requesting relief from Sections 1802.3.C.1 and 304.1.C of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50

ORDER RECEIVED FOR FILING
Date 10/12/92
By [Signature]

ORDER RECEIVED FOR FILING
Date 10/12/92
By [Signature]

ORDER RECEIVED FOR FILING
Date 10/12/92
By [Signature]

ORDER RECEIVED FOR FILING
Date 10/12/92
By [Signature]

feet in lieu of the required 55 feet and to permit a minimum lot area of 4,850 sq.ft. in lieu of the required 6,000 sq.ft. for an existing dwelling on Lot 11 (1936 Bell Avenue), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

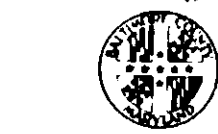
IT IS FURTHER ORDERED that the Petition for Zoning Variance requesting relief from Sections 1802.3.C.1 and 304.1.C of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 feet for Lots 12 and 13, and to permit a minimum lot area of 4,850 sq.ft. in lieu of the required 6,000 sq.ft. for Lot 12, be and is hereby DENIED.

LES:bjs

[Signature]
LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



October 7, 1992

(410) 887-4386

Mr. Matthew Decker
The Decker Group
1321 Dillon Heights Road
Baltimore, Maryland 21228

RE: PETITION FOR ZONING VARIANCE
W/S Bell Avenue, 60' S of the c/l of Cross Avenue
(1936 Bell Avenue)
13th Election District - 1st Councilmanic District
Chester L. Farley, et ux - Petitioners
Case No. 93-46-A

Dear Mr. Decker:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in part and denied in part in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 867-3351.

Very truly yours,

[Signature]
LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Earl Pfeifer
5% Realty Company, 377-A Gambrills Road, Gambrills, Md. 21054

People's Counsel

File

ORDER RECEIVED FOR FILING
Date 10/12/92
By [Signature]



Petition for Variance
to the Zoning Commissioner of Baltimore County
for the property located at 1936-40 Bell Avenue, Lots No. 11, 12 & 13
which is presently zoned D.R. 5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1802.3.C.1 and 304.1.C from the Baltimore County Zoning Regulations to permit the following variances on Lots 11, 12 and 13 of "Oak Park" as indicated on the following schedule 'A' and site plan.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

Applicant unable to secure a reasonable return or make a reasonable use of his property as originally intended in complying with referenced zoning standards.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contact Purchaser/Lessor

The Decker Group

Signature Matthew Decker, President

Address 1321 Dillon Heights Road

Baltimore MD 21228

City State Zipcode

Attorney for Petitioner

(Type or Print Name)

Signature

Address

City State Zipcode

Phone No.

Date

Zipcode

(We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.)

Legal Owner(s)

Chester L. Farley

(Type or Print Name)

Signature Chester L. Farley

Virginia J. Farley

(Type or Print Name)

Box 53

Address

Coal City, W. VA. 25823

City State Zipcode

Name, Address and phone number of legal owner, contact purchaser or representative to be contacted

Earl Pfeifer - 5% Realty Co.

377A Gambrills Rd. 987-7337

Address Gambrills MD 21054

City State Zipcode

Phone No.

ESTIMATED LENGTH OF HEARING

1 hr

Available for Hearing

See following date

ALL OTHER

REVIEWED BY LG DATE 8/13/92

ORDER RECEIVED FOR FILING
Date 10/12/92
By [Signature]

THE DECKER GROUP

August 13, 1992

93-46-A

Schedule "A" -Oak Park

Lot No. 11: To permit a minimum lot width of 50' in lieu of 55'.

To permit a minimum net lot area per dwelling unit of 4850 square feet in lieu of 6,000 square feet.

Lot No. 12: To permit a minimum lot width of 50' in lieu of 55'.

To permit a minimum net lot area per dwelling unit of 4850 square feet in lieu of 6,000 square feet.

Lot No. 13: To permit a minimum lot width of 50' in lieu of 55'.

THE DECKER GROUP

August 13, 1992

93-46-A

ZONING DESCRIPTION FOR LOT NO. 11, * 1936 BELL AVENUE

Beginning at a point on the west side of Bell Avenue which is 40 feet wide at the distance of 10 feet south of the center line of the nearest improved intersecting street, Cross Avenue, which is 20 feet wide. Being Lot Number 11, in the subdivision of Oak Park as recorded in Baltimore County Plat Book Number 3, Folio 145, containing 0.1113 acres of land, more or less. Also known as Lot No. 11, * 1936 Bell Avenue in the 13th Election District.

THE DECKER GROUP

August 13, 1992

93-46-A

ZONING DESCRIPTION FOR LOT NO 12, # 1936 BELL AVENUE

Beginning at a point on the west side of Bell Avenue which is 40 feet wide at the distance of 60 feet south of the center line of the nearest improved intersecting street, Cross Avenue, which is 20 feet wide. Being Lot Number 12, in the subdivision of Oak Park as recorded in Baltimore County Plat Book Number 3, Folio 145, containing 0.1113 acres of land, more or less. Also known as Lot No. 12, # 1936 Bell Avenue in the 13th Election District.

THE DECKER GROUP

August 13, 1992

93-46-A

ZONING DESCRIPTION FOR LOT NO. 13, # 1936 BELL AVENUE

Beginning at a point on the west side of Bell Avenue which is 40 feet wide at the distance of 110 feet south of the center line of the nearest improved intersecting street, Cross Avenue, which is 20 feet wide Being Lot Number 13, in the subdivision of Oak Park as recorded in Baltimore County Plat Book Number 3, Folio 145, containing 0.1668 acres of land, more or less. Also known as Lot 13, # 1936 Bell Avenue in the 13th Election District.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 13th Date of Posting: 9/1/92
Posted for: Variance
Petitioner: Chester & Virginia Farley, et al. The Decker Group
Location of property: 413.521 Acres (100-70) Lot 11, 12 & 13
Location of Sign: Public Hearing on property to be zoned
Remarks: _____
Posted by: [Signature] Date of return: 9/1/92
Number of Signs: 1

Call for a copy of the
Zoning Ordinance, etc.
1000-40 Bell Avenue
Suite #11, #12 and #13
13th Election District
Legal Owner(s): Chester L. & Virginia J. Farley
Contract Purchaser(s): The Decker Group
Hearing: Thursday, October 1, 1992 at 2:00 p.m. in Rm. 118, Old Courthouse
Variance to permit a minimum lot width of 50 feet in lieu of 55 feet (Lots #11, #12 and #13); and to permit a minimum set back area per dwelling unit of 4850 sq. ft. in lieu of 6,000 sq. ft. (Lots #11 and #13)

CERTIFICATE OF PUBLICATION

TOWSON, MD., 9/4, 1992

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/3, 1992

THE JEFFERSONIAN,

S. Zeke Olson
Publisher

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Date _____ Account R-001-6150
Number _____
1936-40 Bell Ave
Please Make Checks Payable To: Baltimore County \$150.00
BY: 091122AM08-13 92

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

DATE: 9-10-92

The Decker Group
1321 Dillion Height Road
Baltimore, Maryland 21228

RE:
CASE NUMBER: 93-46-A (Item 52)
W/S Bell Avenue, SMC Cross Avenue
1936-40 Bell Avenue (Lots #11, #12, and #13)
13th Election District - 1st Councilmanic
Legal Owner(s): Chester L. & Virginia J. Farley
Contract Purchaser(s): The Decker Group
HEARING: THURSDAY, OCTOBER 1, 1992 at 2:00 p.m. in Rm. 118, Old Courthouse

Dear Petitioner(s):

Please be advised that \$ 69.55 is due for advertising and posting of the above captioned property and hearing date.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 109, Towson, Maryland 21204. Place the case number on the check and make same payable to Baltimore County, Maryland. In order to avoid delay of the issuance of proper credit and/or your order, immediate attention to this matter is suggested.

Call John

ARNOLD JABLON
DIRECTOR

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

AUGUST 28, 1992

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-46-A (Item 52)
W/S Bell Avenue, SMC Cross Avenue
1936-40 Bell Avenue (Lots #11, #12, and #13)
13th Election District - 1st Councilmanic
Legal Owner(s): Chester L. & Virginia J. Farley
Contract Purchaser(s): The Decker Group
HEARING: THURSDAY, OCTOBER 1, 1992 at 2:00 p.m. in Rm. 118, Old Courthouse

Variance to permit a minimum lot width of 50 feet in lieu of 55 feet (Lots #11, #12 and #13); and to permit a minimum set back area per dwelling unit of 4850 sq. ft. in lieu of 6,000 sq. ft. (Lots #11 and #13)

Lawrence E. Schmidt
Lawrence E. Schmidt

Zoning Commissioner of
Baltimore County

cc: Chester & Virginia Farley
Earl Pfeifer
The Decker Group

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

September 24, 1992

Mr. & Mrs. Chester L. Farley
Box 53
Coal City, WV 25823

RE: Item No. 52, Case No. 93-46A
Petitioner: Chester L. Farley, et ux
Petition for Variance

Dear Mr. & Mrs. Farley:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this 13th day of August, 1992

Call John
ARNOLD JABLON
DIRECTOR

Received By:
W. Carl Richards Jr.
Chairman,
Zoning Plans Advisory Committee

Petitioner: Mr. Chester L. Farley, et ux

Petitioner's Attorney:

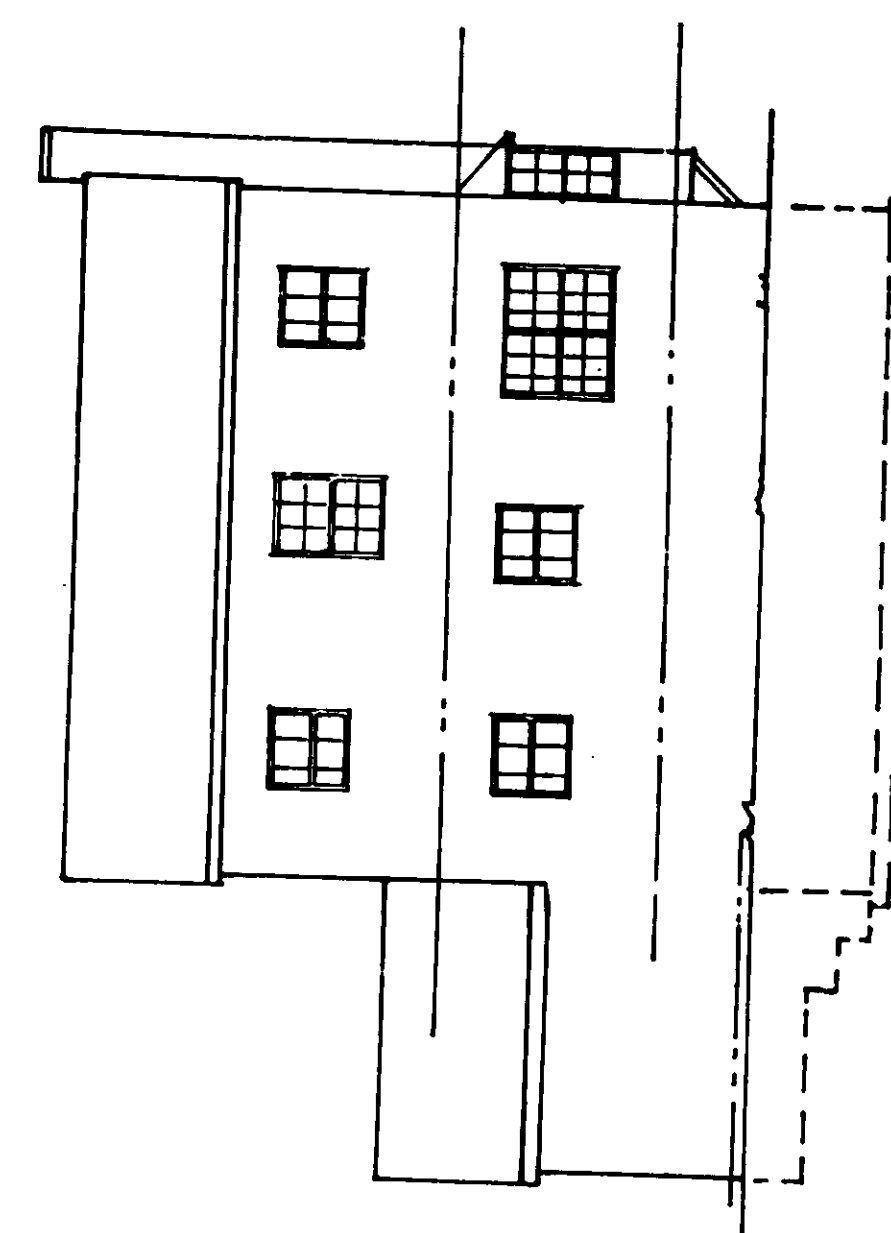
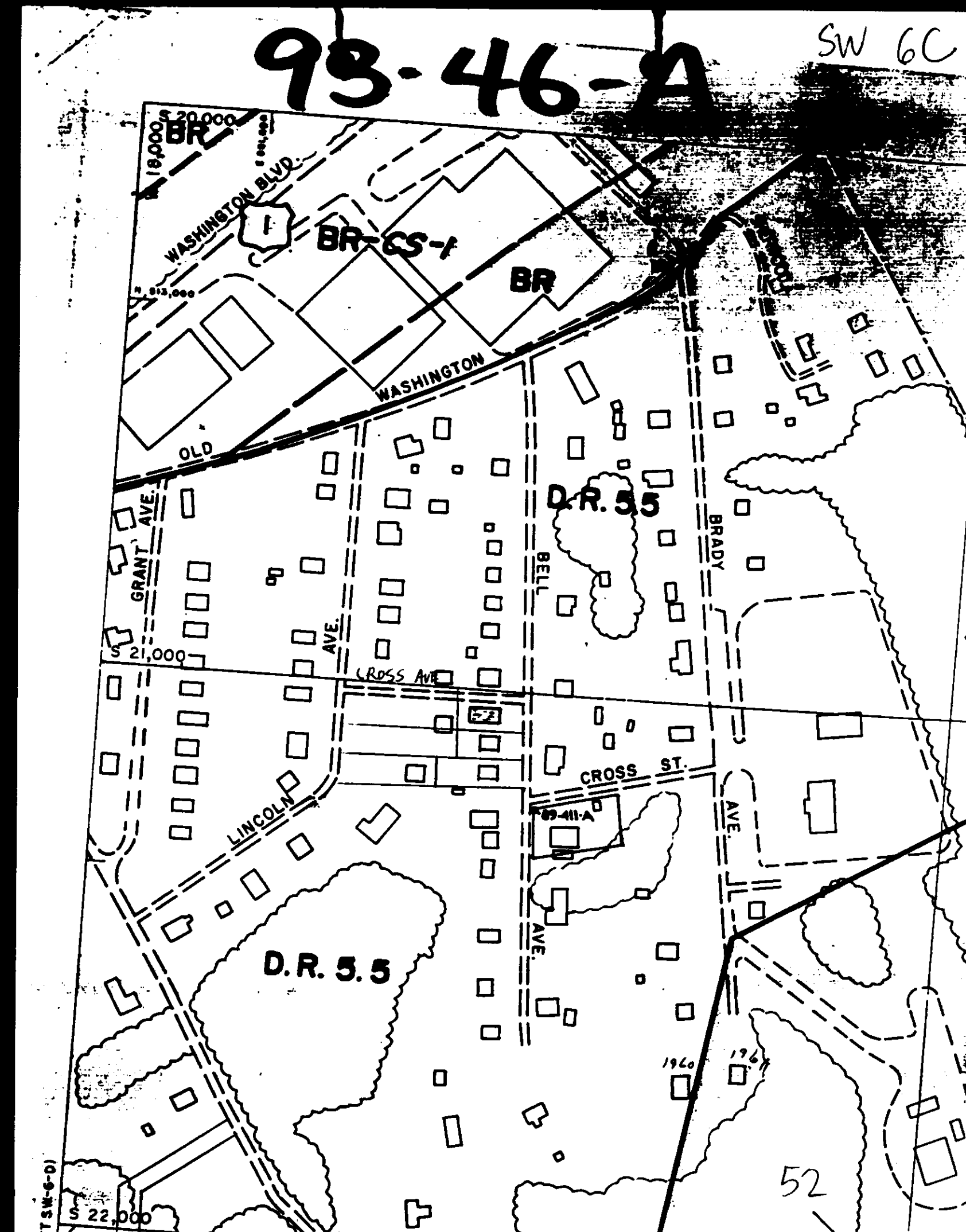
Engineering Division (Public Services)
Development Review Committee Response Form
Authorized signature: [Signature] Date: 9/3/92

Project Name	Waiver Number	Zoning Issue	Meeting Date
James Enterprises	48		8-24-92 NC
White Marsh Joint Venture	49		NC
Salvo Realty, Inc.	50		Comment
Robert T. and Lorri A. Burgess	51		Comment
Chester L. And Virginia J. Farley	52		NC
Mark Allan Claypoole	53		NC
Ritz Enterprises	55		NC
Glenda L. Mosley	56		Comment
Etta E. Plonden and Joan and Garland Arrington	57		NC

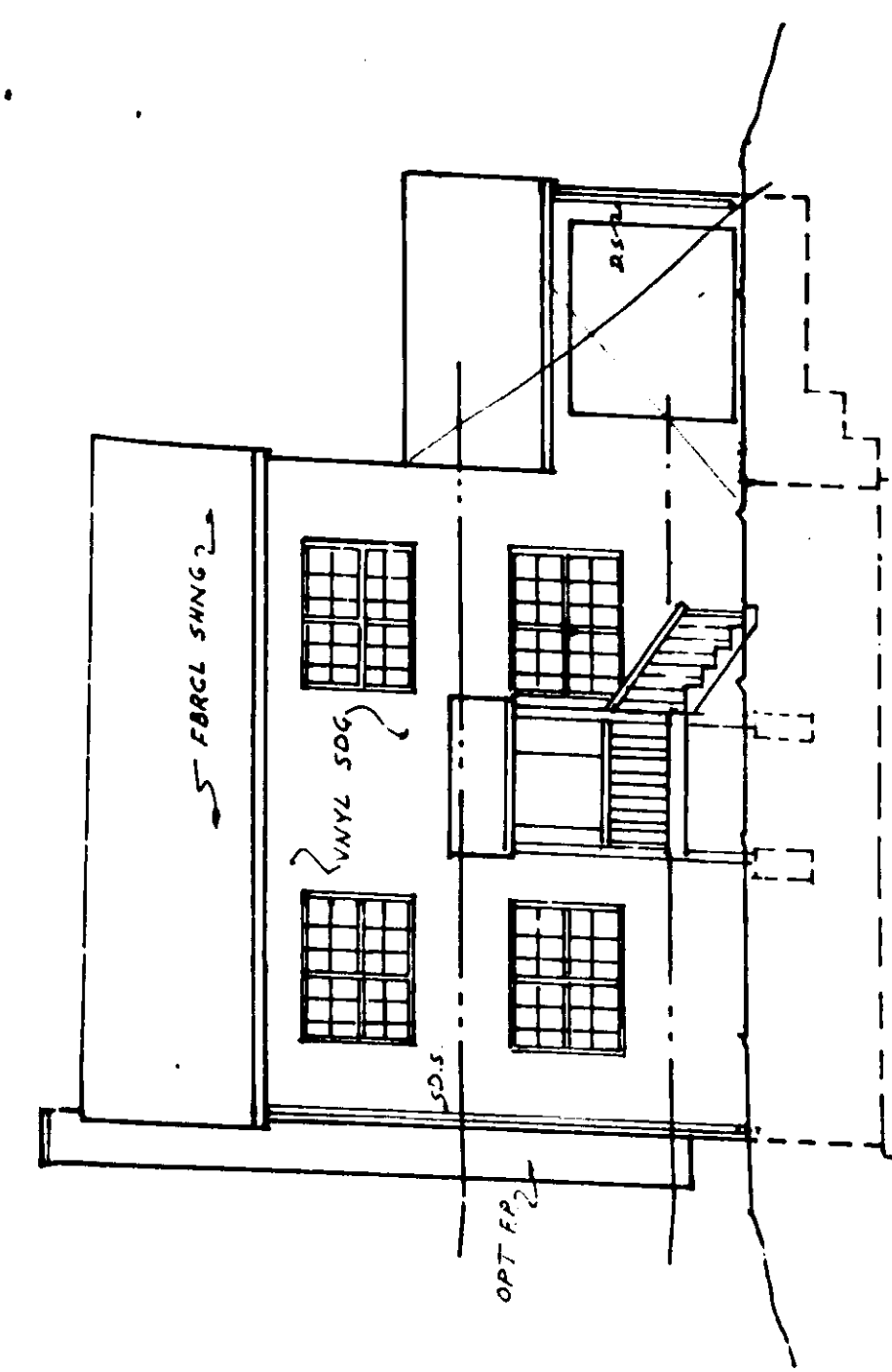
COUNT 20

FINAL TOTALS
COUNT 21

*** END OF REPORT ***

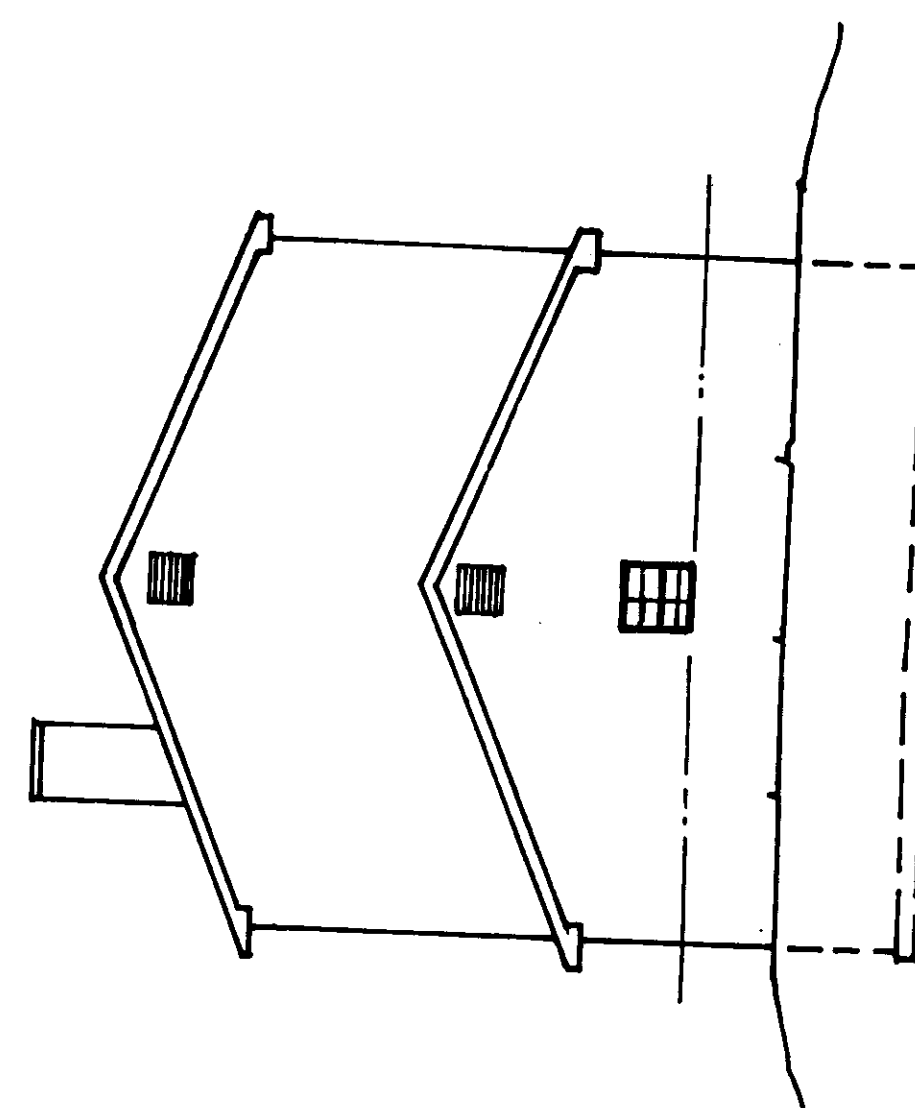


REAR
1/8" = 1'-0"

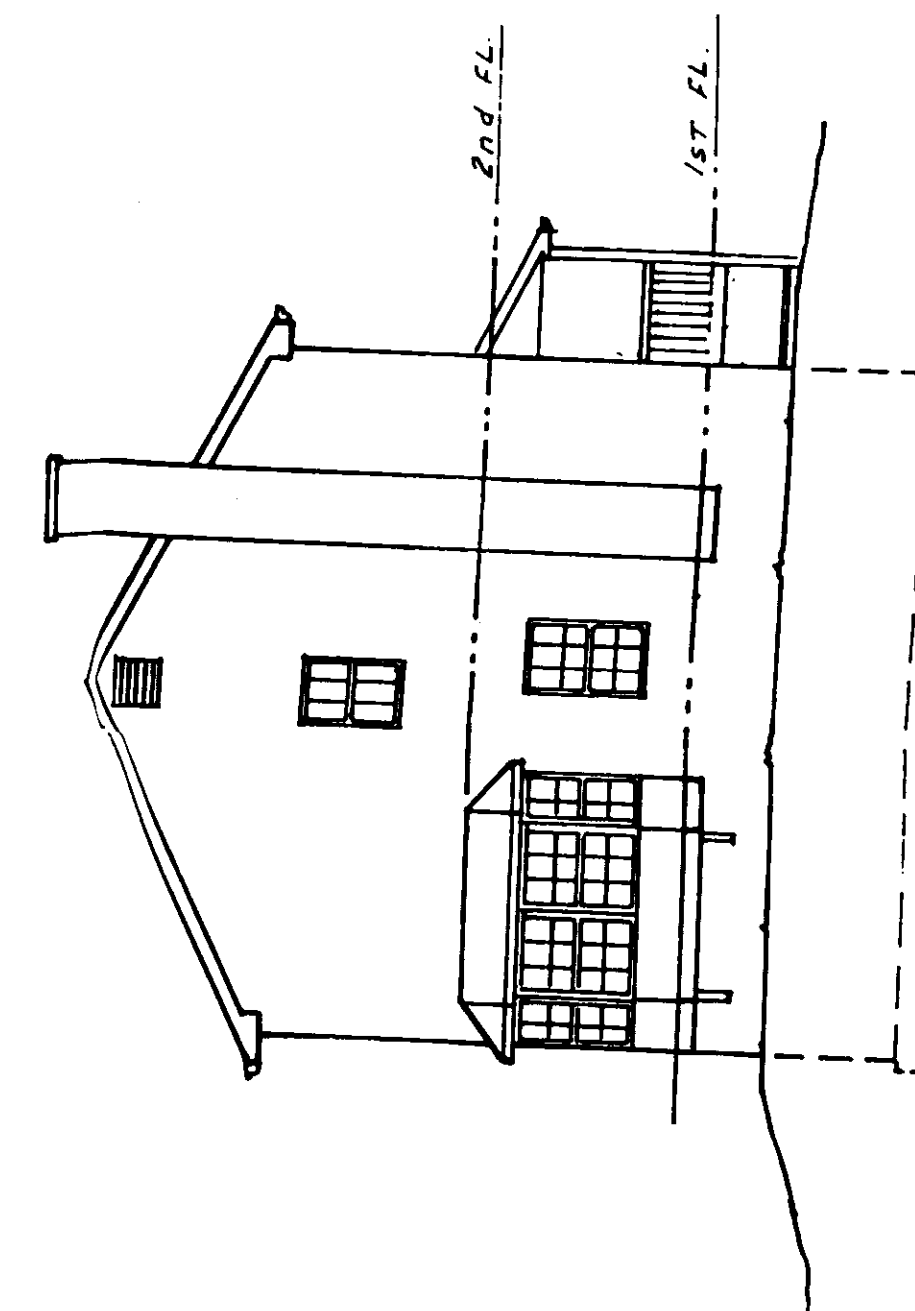


FRONT
1/8" = 1'-0"

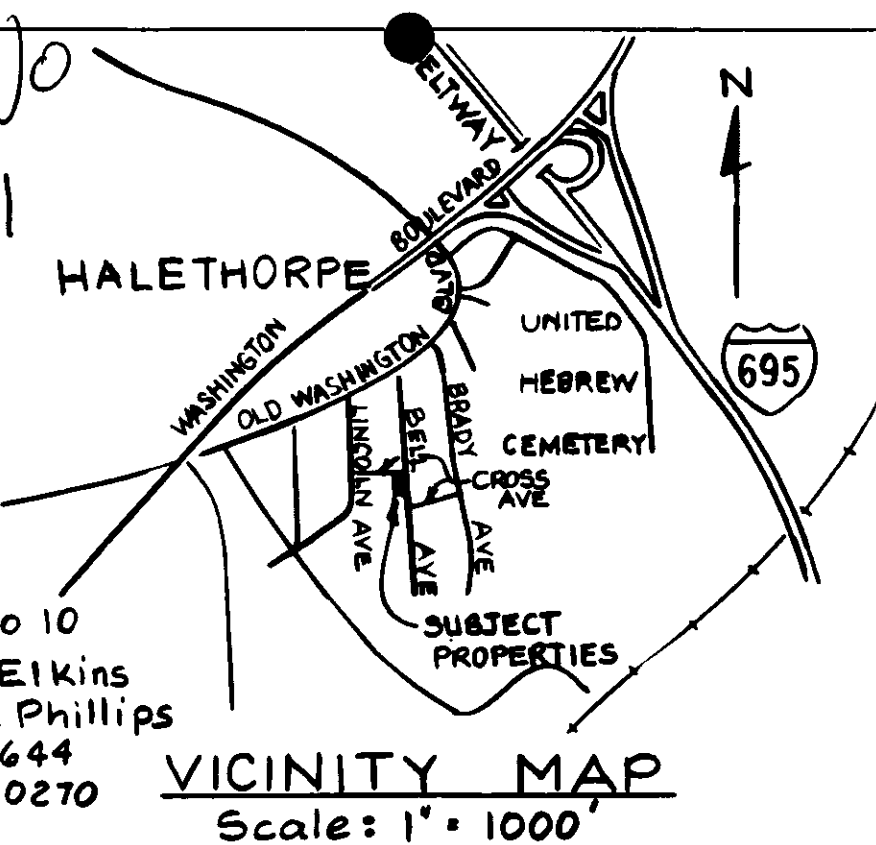
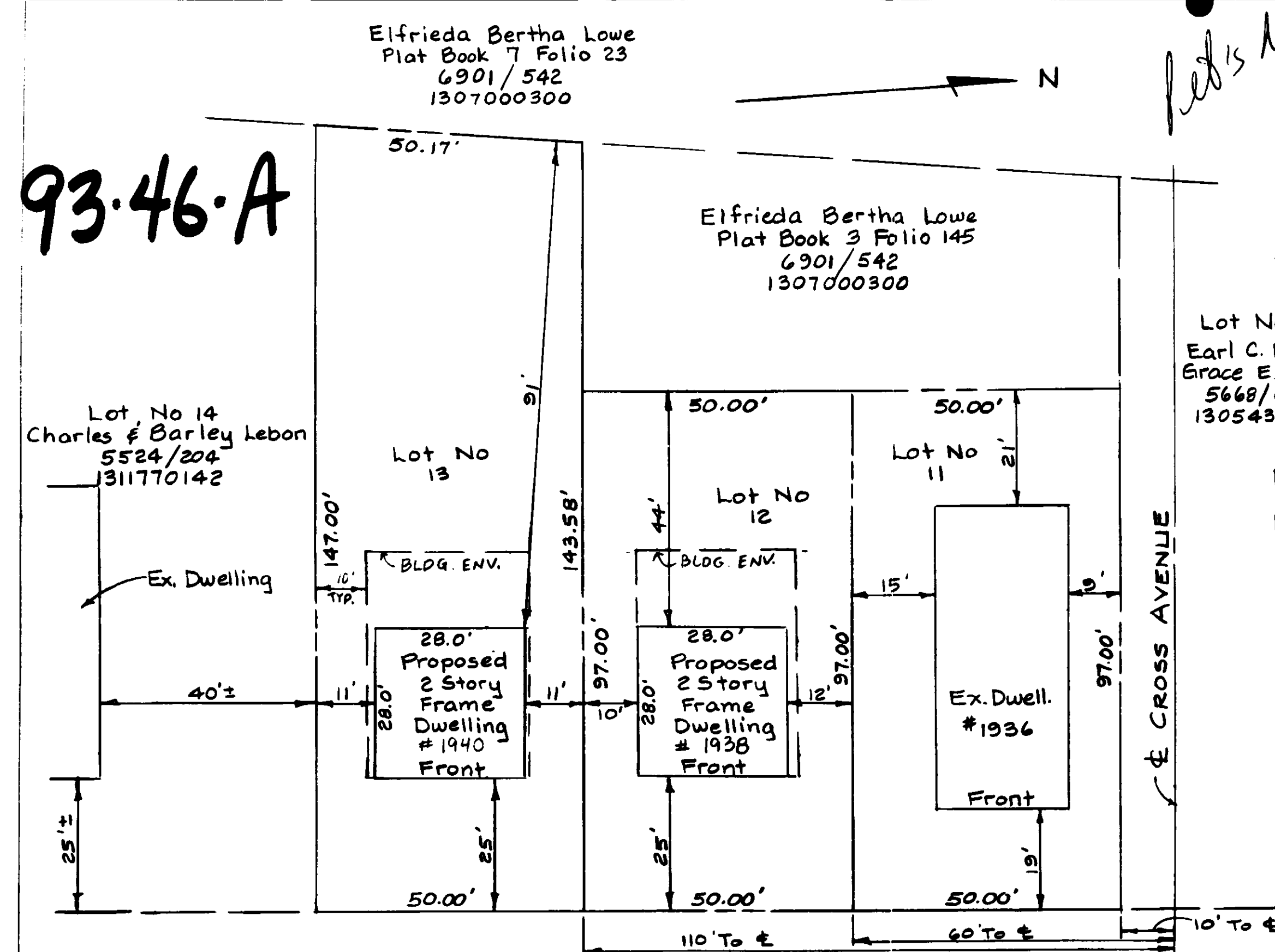
93-46-A



RIGHT SIDE
1/8" = 1'-0"



LEFT SIDE
1/8" = 1'-0"



1" = 200' Scale Map #: SW-6C
Prior Zoning Hearings: None
Water & Sewer: Public
Chesapeake Bay Critical Area: No
Lot Size: 11 4850 s.f. = 0.1113 Ac.
12 4850 s.f. = 0.1113 Ac.
13 7265 s.f. = 0.1668 Ac.

Plat to Accompany Petition
for Zoning Variance
Lots Nos. 11, 12 & 13
#1936 Bell Avenue
Councilmanic District: 1
Election District: 13
Zoning: DR 5.5
Scale: 1" = 20' Date: 8-5-92
Prepared by: WRD

Subdivision Name: Oak Park
Plat Book #3 Folio #145
Lots Nos 11, 12 & 13
Owner: Charles L. & Virginia J. Farley
Deed Ref.: 4057/444 Tax Acct. No.: 1306000410

Applicant: Matt Decker
1321 Dillon Heights Ave.
Baltimore, Md. 21228